

1 THE HONORABLE JOHN H. CHUN  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 FEDERAL TRADE COMMISSION, et al.,

10 Plaintiffs,

11 v.

12 AMAZON.COM, INC., a corporation,

13 Defendant.

14 Case No. 2:23-cv-01495-JHC

15  
16 [PLAINTIFFS' PROPOSED]  
17 DEPOSITION COORDINATION  
18 PROTOCOL AND ORDER

19 Plaintiffs Federal Trade Commission (“FTC”) and the states and territories of New York,  
20 Connecticut, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota,  
21 Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Puerto Rico, Rhode  
22 Island, Vermont, and Wisconsin, acting by and through their respective Attorneys General  
23 (“Plaintiff States,” and together with the FTC, “Plaintiffs”) and Defendant Amazon.com, Inc.  
24 (“Amazon”) have agreed and stipulated to certain issues regarding the coordination of deposition  
25 discovery between the above-referenced action (“Action”) and certain other matters, and hereby  
26 jointly submit this Stipulated Coordination Protocol and Proposed Order (“Coordination Order”)  
for approval and entry by the Court.

1    **I.    DEFINITIONS**

2    1.    The following definitions shall apply for the purposes of this Order:

3            a.    Amazon Witness: Any person who is (i) a current employee or officer of  
 4    Amazon, or (ii) a former employee or officer of Amazon who is represented by Counsel  
 5    for Amazon. Upon receipt of a deposition notice from Plaintiffs for a former employee or  
 6    officer of Amazon, Counsel for Amazon shall promptly, and within no more than fourteen  
 7    (14) calendar days, notify Plaintiffs in writing if the former employee or officer is  
 8    represented by Counsel for Amazon. If Counsel for Amazon does not provide notice that  
 9    it represents a former employee or officer within fourteen (14) calendar days, the  
 10   deposition shall be governed by the provisions of Section V covering Non-Party witnesses,  
 11   unless otherwise agreed to by the Parties.

12            b.    Coordinated Actions: *The People of the State of California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.); *Frame-Wilson et al. v. Amazon.com, Inc.*, No. 2:20-cv-00424-JHC (W.D. Wash.); *De Coster et al. v. Amazon.com, Inc.*, No. 2:21-cv-00693-JHC (W.D. Wash.); *Brown et al. v. Amazon.com, Inc.*, No. 2:22-cv-00965-JHC (W.D. Wash.); *District of Columbia v. Amazon.com, Inc.*, No. 2021-CA-001775-B (D.C. Super. Ct.); and any other civil action in or approaching active discovery involving substantially similar claims which is identified and agreed upon in writing by the Parties.

19            c.    Coordinated Deposition: A deposition to be conducted pursuant to this  
 20   Coordination Order that will be noticed and taken by Plaintiffs and Coordinated Plaintiffs'  
 21   Attorneys for at least one of the Coordinated Actions.

22            d.    Coordinated Plaintiffs' Attorneys: Counsel of record for plaintiffs in the  
 23   Coordinated Actions.

24            e.    Counsel for Amazon: Counsel of record for Amazon.com, Inc. in this  
 25   Action and the Coordinated Actions.

f. Mbadiwe Action: *Mbadiwe et al. v. Amazon.com, Inc.*, No. 1:22-cv-9542-S.D.N.Y.).

g. Mbadiwe Plaintiffs' Attorneys: Counsel of record for plaintiffs in the *Mbadiwe Action*.

h. Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party in this Action.

i. Party or Parties: Any entity named as a plaintiff or defendant in this Action.

## **II. GENERAL PROVISIONS**

9       2. This Coordination Order applies to the Parties in the Action, and provides protocols  
10      applicable to conducting deposition discovery in this Action. Nothing in this Coordination Order  
11      shall preclude or otherwise restrict Amazon from engaging in further or different coordination  
12      efforts in the Coordinated Actions or in any other action, but no such efforts by Amazon shall  
13      modify this Coordination Order, be binding on Plaintiffs, affect Plaintiffs' ability to take discovery  
14      in this Action, or otherwise have any effect on the present Action.

15       3.     This Coordination Order shall be effective only upon agreement of the Parties, or  
16     by order of the Court.

17       4. Any Party may seek to later modify this Coordination Order for good cause. Prior  
18 to doing so, the Parties shall meet and confer in good faith regarding any proposed modifications.  
19 This Coordination Order may be amended only by subsequent written agreement among the  
20 Parties, or by order of the Court.

21       5.     Amazon represents that it is engaged in efforts to negotiate and have substantially  
22 similar orders entered in each of the Coordinated Actions. To the extent that any dispute arises  
23 related to terms on coordination contained in orders in the Coordinated Actions that differ from or  
24 conflict with this Coordination Order, the Parties shall meet and confer to determine if proposed  
25 modifications of this Coordination Order may be necessary to facilitate efficient coordination with  
26 the Coordinated Actions.

1       6. Unless otherwise agreed to and ordered by this Coordination Order, discovery in  
 2 this Action shall be governed by the applicable provisions of the Federal Rules of Civil Procedure,  
 3 the Federal Rules of Evidence, the Court's Case Scheduling Order (ECF 159), Case Management  
 4 Order (ECF 161), and Order Re Deposition Limits (ECF 166) ("Deposition Order"), any other  
 5 Court order in this Action, and any other applicable rules or orders that would apply to govern  
 6 discovery in the absence of this Coordination Order.

7       7. All Parties reserve all rights to formally object (by motion or otherwise) to any  
 8 deposition or deposition examination on any grounds and seek appropriate relief from the Court  
 9 as warranted, including with respect to the taking of any deposition or to the timing or scope of  
 10 any deposition in this Action.

11       8. Only depositions noticed by a Party in this Action shall be treated as having been  
 12 noticed and taken in this Action, absent an agreement between the Parties to the contrary. Any  
 13 testimony by an Amazon Witness or a Non-Party witness in a Coordinated Deposition shall be  
 14 considered deposition testimony given in this Action, whether the examination was conducted by  
 15 Plaintiffs, by Coordinated Plaintiffs' Attorneys, or by Counsel for Amazon. The Parties reserve  
 16 all rights to object to the admissibility or use of such testimony pursuant to the applicable rules.

17       9. For any Coordinated Deposition, the Parties agree that the Parties, the Coordinated  
 18 Plaintiffs' Attorneys, and Counsel for Amazon in the Coordinated Actions may attend and  
 19 participate in such Coordinated Depositions to the fullest extent permitted under the applicable  
 20 rules, including this Coordination Order and any Order of the Court in this Action.<sup>1</sup> With respect  
 21 to any materials or testimony designated Confidential or Highly Confidential – Attorneys' Eyes  
 22 Only, the Parties' obligations will be governed by the Protective Order in this Action. The  
 23 obligations of Amazon's Counsel in the Coordinated Actions and the Coordinated Plaintiffs'

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 25       <sup>1</sup> Plaintiffs further agree that the *Mbadiwe* Plaintiffs' Attorneys and Counsel for Amazon in the *Mbadiwe* Action  
 26 may attend, but will not participate in, Coordinated Depositions where the witness has been noticed for a deposition  
 in the *Mbadiwe* Action (for Amazon Witnesses) or has been subpoenaed for a deposition in the *Mbadiwe* Action (for  
 Non-Party witnesses). Plaintiffs acknowledge that the *Mbadiwe* Plaintiffs, Amazon, and Non-Parties, as applicable,  
 may agree on separate deposition time for the *Mbadiwe* Action after any such Coordinated Deposition.

1 Attorneys will be governed by the respective Protective Orders in the Coordinated Actions. The  
 2 obligations of Amazon's Counsel and the *Mbadiwe* Plaintiffs' Attorneys will be governed by the  
 3 Protective Order in the *Mbadiwe* Action.

4 10. To facilitate coordinated depositions of witnesses between this Action and the  
 5 Coordinated Actions, Plaintiffs may disclose materials and information derived from such  
 6 materials designated by Amazon as Confidential or Highly Confidential – Attorneys' Eyes Only  
 7 under the February 13, 2024 Protective Order ("Protective Order") (ECF 160) to Coordinated  
 8 Plaintiffs' Attorneys, provided that (i) such materials are reasonably necessary to facilitate such  
 9 coordinated depositions, including discussions about potential coordinated depositions of Amazon  
 10 Witnesses, potential coordinated depositions of Amazon pursuant to Rule 30(b)(6) and/or Cal.  
 11 Code Civ. Proc. § 2025.230, or potential coordinated depositions of Non-Party witnesses; and (ii)  
 12 such Coordinated Plaintiffs' Attorneys have agreed in writing to treat those materials and  
 13 information as Protected Material under the respective Protective Orders in the Coordinated  
 14 Actions. *See* Stipulation and Protective Order, *The People of the State of California v.*  
 15 *Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct. Jan. 27, 2023); Protective Order (ECF  
 16 90), *Frame-Wilson et al. v. Amazon.com, Inc.*, No. 2:20-cv-00424-JHC (W.D. Wash. Feb. 27,  
 17 2023); Stipulated Protective Order, *De Coster et al. v. Amazon.com, Inc.*, No. 2:21-cv-00693-JHC  
 18 (W.D. Wash. Mar. 15, 2023); Stipulated Protective Order (ECF 51), *Brown et al. v. Amazon.com,*  
 19 *Inc.*, No. 2:22-cv-00965-JHC (W.D. Wash. Oct. 16, 2023); Protective Order Granted, *District of*  
 20 *Columbia v. Amazon.com, Inc.*, No. 2021-CA-001775-B (D.C. Super. Ct., Oct. 25, 2024).  
 21 Coordinated Plaintiffs' Attorneys may disclose materials and information derived from such  
 22 materials designated by Amazon as Confidential or Highly Confidential – Attorneys' Eyes Only  
 23 under the Protective Orders in the Coordinated Actions to Plaintiffs. Plaintiffs will treat those  
 24 materials and information as Protected Material under the Protective Order in this Action.

25 11. Nothing in this Coordination Order permits any Party to take more than one  
 26 deposition of any witness without agreement of the Parties and witness or leave of Court.

1 **III. DEPOSITIONS OF AMAZON WITNESSES FIRST NOTICED IN THIS ACTION**

2       12. To the extent Plaintiffs seek the deposition of an Amazon Witness in the Action,  
 3 Plaintiffs shall issue a deposition notice to Counsel for Amazon, for a date not sooner than forty-  
 4 five (45) calendar days from the date the notice is served, and provide the deposition notice to the  
 5 Coordinated Plaintiffs' Attorneys.

6       13. Within seven (7) calendar days after receiving a deposition notice (or within  
 7 fourteen (14) calendar days for a former employee or officer of Amazon), Counsel for Amazon  
 8 shall use best efforts to confirm Plaintiffs' proposed date or, to the extent the witness or counsel is  
 9 unavailable, provide one or more alternative dates for the deposition. If alternative dates are  
 10 provided, Counsel for Amazon shall use best efforts to provide at least one alternative date that is  
 11 within fourteen (14) calendar days of Plaintiffs' initial proposed date, and will not propose any  
 12 date that would require more than three (3) Amazon Witnesses to be deposed on the same date.  
 13 The Parties shall thereafter meet and confer on a reasonable and appropriate date, time, and  
 14 location for the noticed deposition.

15       14. Consistent with Federal Rule of Civil Procedure 30(d)(1) and the Court's  
 16 Deposition Order, the Parties agree that Plaintiffs' examination of an Amazon Witness in a  
 17 Coordinated Deposition shall be limited to no more than seven (7) hours on the record, with no  
 18 more than seven (7) hours on the record per day, unless otherwise agreed to by all Parties and the  
 19 Amazon Witness.

20       15. For any Coordinated Deposition of an Amazon Witness, the Parties agree that the  
 21 examination by Plaintiffs and Coordinated Plaintiffs' Attorneys shall be limited to no more than a  
 22 combined total of ten (10) hours on the record, with no more than seven (7) hours on the record  
 23 per day unless otherwise agreed to all Parties and the Amazon Witness.

24       16. Notwithstanding the limit set forth in Paragraph 15, Plaintiffs and the Coordinated  
 25 Plaintiffs' Attorneys may jointly designate up to sixteen (16) Amazon Witnesses, for whom the  
 26 examination by Plaintiffs and the Coordinated Plaintiffs' Attorneys shall be limited to a combined

1 total of fourteen (14) hours on the record, with no more than seven (7) hours on the record per day  
 2 unless otherwise agreed to by the Amazon Witness. Plaintiffs and the Coordinated Plaintiffs'  
 3 Attorneys shall make such designations by written notice no later than thirty (30) calendar days  
 4 prior to the date of such deposition. If Amazon objects to any such designation, it will provide  
 5 written notice of that objection to Plaintiffs and the Coordinated Plaintiffs' Attorneys within five  
 6 (5) business days, and Amazon, Plaintiffs, and the Coordinated Plaintiffs' Attorneys will meet and  
 7 confer regarding that objection. If a dispute remains, Amazon may seek relief from the Court in  
 8 this action for Coordinated Depositions first noticed in this action; however, absent agreement of  
 9 the Parties or Order of the Court, the fourteen (14) hour limit shall apply to such deposition.

10       17. In the event Amazon seeks to coordinate testimony from one or more Amazon  
 11 Witnesses offered in response to a deposition notice to Amazon pursuant to Federal Rule of Civil  
 12 Procedure 30(b)(6) in this Action, Amazon shall identify the designated topics for which it  
 13 proposes offering coordinated testimony at the time Amazon serves its responses and objections  
 14 to such deposition notice. Amazon shall provide Plaintiffs with the relevant Rule 30(b)(6) or Cal.  
 15 Code Civ. Proc. § 2025.230 notice(s) and Amazon's responses and objections thereto, whether or  
 16 not Amazon is proposing coordination. Plaintiffs, in their sole discretion, may also propose  
 17 coordination for some or all Rule 30(b)(6) topics. Following a proposal for coordination by either  
 18 side, the Parties agree to meet and confer in good faith concerning the coordination of such  
 19 deposition, including the scope of testimony and appropriate time limits for said deposition. If no  
 20 party proposes coordination, or if the Parties are not able to reach an agreement regarding  
 21 coordination, Plaintiffs may, in their sole discretion, elect to proceed with the deposition on the  
 22 topics as noticed or as otherwise negotiated by the Parties. If the Parties are not able to reach an  
 23 agreement regarding coordination after meeting and conferring in good faith, Amazon shall not  
 24 refuse to designate a witness (or witnesses) or schedule a deposition(s) based on any disputes  
 25 regarding coordination unless Amazon files a motion for a Protective Order. Nothing in this  
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1 Paragraph shall affect Amazon's right to object to any deposition notice issued pursuant to Rule  
 2 30(b)(6) on any grounds.

3 **IV. DEPOSITIONS OF AMAZON WITNESSES FIRST NOTICED IN  
 4 COORDINATED ACTIONS**

5 18. In the event Amazon receives a deposition notice or subpoena for an Amazon  
 6 Witness in any Coordinated Action, Counsel for Amazon shall promptly notify Plaintiffs and shall  
 7 provide Plaintiffs with a copy of the deposition notice within seven (7) calendar days.

8 19. Upon receipt of a deposition notice from Amazon, and if Amazon's production of  
 9 documents in response to Plaintiffs' discovery requests issued on or before July 1, 2024 has been  
 10 substantially complete for at least thirty (30) calendar days, Plaintiffs shall have seven (7) calendar  
 11 days to notify Counsel for Amazon in writing whether Plaintiffs intend to notice such Amazon  
 12 Witness for deposition in the present Action such that the deposition will be a Coordinated  
 13 Deposition, and whether Plaintiffs are reasonably able to proceed with such deposition on the date  
 14 noticed in the Coordinated Action. If Amazon's production of documents in response to Plaintiffs'  
 15 discovery requests issued on or before July 1, 2024 has not been substantially complete for at least  
 16 thirty (30) calendar days at the time Amazon provides notice, Plaintiff may indicate its intent to  
 17 participate in the deposition of the Amazon Witness, but shall not be required to give such notice  
 18 until forty (40) days after Amazon substantially completes its production of documents in response  
 19 to Plaintiffs' discovery requests issued on or before July 1, 2024.

20 20. To the extent Plaintiffs are not reasonably able to proceed with the deposition on  
 21 the date noticed in the Coordinated Action, or to the extent Plaintiffs require reasonable additional  
 22 time to prepare, Plaintiffs will use best efforts to coordinate with Amazon and Coordinated  
 23 Plaintiffs' Attorneys to identify mutually agreeable dates for the Coordinated Deposition.

24 21. If Plaintiffs elect to participate in a Coordinated Deposition first noticed in a  
 25 Coordinated Action, the provisions in Paragraphs 14 through 16 above shall apply.

1       22. If Amazon does not provide notice to Plaintiffs regarding a deposition notice issued  
 2 in Coordinated Action as required in Paragraph 18, any later notice by Amazon shall have no effect  
 3 on Plaintiffs' rights with respect to the deposition of that Amazon Witness in this Action.  
 4 However, Plaintiffs, in their sole discretion, may elect to participate in a Coordinated Deposition  
 5 of an Amazon Witness first noticed in a Coordinated Action by issuing a deposition notice for the  
 6 Amazon Witness. In such instance, the provisions in Paragraphs 14 to 16 above shall apply.

7       23. If Amazon provides notice to Plaintiffs regarding a deposition notice issued for an  
 8 Amazon Witness in a Coordinated Action as required in Paragraph 18, and Plaintiffs do not elect  
 9 to participate in a Coordinated Deposition for that Amazon Witness as required in Paragraph 19,  
 10 Plaintiffs may not seek a deposition of that same Amazon Witness in this Action without Amazon's  
 11 consent or leave of the Court. Nothing in this Paragraph, or otherwise in the Coordination Order,  
 12 bars Plaintiffs from seeking agreement from Amazon or leave of Court to take additional testimony  
 13 from any Amazon Witness based on documents produced by Amazon after the date Amazon  
 14 represents it has substantially completed its document production.

15       24. In the event Amazon receives a deposition notice to Amazon in its corporate  
 16 capacity in any Coordinated Action, Counsel for Amazon shall promptly notify Plaintiffs and shall  
 17 provide Plaintiffs with a copy of the deposition notice within seven (7) calendar days. Amazon  
 18 shall provide Plaintiffs with a copy of its responses and objections to any such deposition notice  
 19 contemporaneously with the service of Amazon's responses and objections. In the event either  
 20 Party seeks to coordinate testimony as to one or more topics in a deposition notice to Amazon in  
 21 its corporate capacity issued in any Coordinated Action, the Party seeking coordinated testimony  
 22 shall identify the designated topics for which it proposes coordinated testimony either (i) at the  
 23 time Amazon serves its responses and objections to such deposition notice (for Amazon); or  
 24 (ii) within fourteen (14) calendar days of receiving Amazon's responses and objections to such  
 25 deposition notice (for Plaintiffs). Thereafter, the Parties agree to meet and confer in good faith  
 26 concerning the coordination of such deposition, including the scope of testimony for any

1 coordinated proceeding and any appropriate time limits for said deposition. If the Parties are not  
 2 able to reach an agreement regarding coordination after meeting and conferring in good faith,  
 3 Amazon shall not refuse to designate a witness (or witnesses) or schedule a deposition(s) based on  
 4 any disputes regarding coordination unless Amazon files a motion for a Protective Order. Nothing  
 5 in this Paragraph shall affect Amazon's right to object to any deposition notice issued pursuant to  
 6 Rule 30(b)(6) on any grounds.

7 **V. NON-PARTY WITNESS DEPOSITION COORDINATION**

8 25. The Parties agree that a Party seeking the deposition of a Non-Party witness will  
 9 issue and send to the other Parties a deposition notice with a proposed date for the deposition,  
 10 which absent mutual agreement or leave of Court for good cause, shall not be set for a date any  
 11 earlier than forty-five (45) calendar days from the date the Party serves the deposition notice. A  
 12 Party may serve a deposition notice without first obtaining or issuing a subpoena to compel  
 13 attendance of the Non-Party witness at the deposition.

14 26. The Party receiving the deposition notice shall, within fourteen (14) calendar days,  
 15 advise the Party seeking the deposition as to whether it intends to cross-notice the deposition and  
 16 if so, shall either (i) confirm the proposed date, or (ii) propose reasonable alternative dates.

17 27. If the Party receiving the deposition notice intends to seek documents in connection  
 18 with the deposition of the Non-Party witness, the Party receiving the deposition notice shall also,  
 19 within fourteen (14) calendar days, serve any subpoena for production of such documents on the  
 20 Non-Party witness (or any other Non-Party affiliated with or previously affiliated with the Non-  
 21 Party witness, as applicable). The Party serving such a document subpoena on a Non-Party shall  
 22 use its best efforts to reach an agreement with the Non-Party regarding the scope and timing of  
 23 document production, or to otherwise enforce the subpoena, so as to not unreasonably delay the  
 24 taking of the Non-Party deposition noticed by the other Party.

25 28. If the Non-Party witness or their counsel is not reasonably available on the date  
 26 noticed, the noticing Party shall promptly notify all Parties, and the Parties shall meet and confer

1 within five (5) calendar days thereof regarding a date, time, and location for the noticed deposition  
2 that is acceptable to all Parties and the Non-Party witness.

3 29. For depositions that are noticed by Plaintiffs and cross-noticed by Amazon, or vice  
4 versa, the Parties agree to work in good faith to equally allocate the time available to question each  
5 Non-Party witness between Amazon, on the one hand, and Plaintiffs and the Coordinated  
6 Plaintiffs' Attorneys, on the other hand.

7 30. The Parties agree to work in good faith to minimize the burden on and  
8 inconvenience to Non-Parties, including by discussing mutually agreeable modifications to the  
9 date, time, and location for each deposition that will (i) allow for reasonable coordination with  
10 depositions of the same Non-Party in the Coordinated Actions; (ii) allow the Parties a reasonable  
11 opportunity to obtain documents related to the deposition from the Non-Party pursuant to a  
12 subpoena in advance of any such deposition; and (iii) allow for reasonable coordination with  
13 depositions of the same Non-Party in the *Mbadiwe* Action.

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15 IT IS SO ORDERED

16 DATED this \_\_ day of \_\_\_\_\_, 2024.

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18 THE HONORABLE JOHN H. CHUN  
19 UNITED STATES DISTRICT JUDGE  
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